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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,564	11/07/2000	Florian Kern	103739-5	5234
27384	7590	07/29/2011	EXAMINER	
Briscoe, Kurt G. Norris McLaughlin & Marcus, PA 875 Third Avenue, 8th Floor New York, NY 10022			ZEMAN, ROBERT A	
			ART UNIT	PAPER NUMBER
			1645	
			MAIL DATE	DELIVERY MODE
			07/29/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/600,564	<b>Applicant(s)</b> KERN ET AL.	
	<b>Examiner</b> ROBERT A. ZEMAN	<b>Art Unit</b> 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-26 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

The amendment and response filed on 5-19-2011 are acknowledged. Claims 14 and 16 were amended. Claims 14-26 are pending. Claims 22-26 remain withdrawn from consideration as being drawn to non-elected invention(s). Claims 14-21 are currently under examination.

#### ***Claim Objections Withdrawn***

The objection to claim 14 for containing confusing language is withdrawn in light of the amendment thereto.

#### ***Claim Rejections Withdrawn***

The rejection of claims 14 and 16-21 under 35 U.S.C. 102(a) as being anticipated by Yanagisawa et al. (International Immunology, 1997, Vol. 9 No. 2, pages 227-237) is withdrawn.

The rejection of claims 14-21 under 35 U.S.C. 103(a) as being unpatentable over Picker et al. (Blood, 1995, Vol. 86 No. 4, pages 1408-1419 -- IDS) and Yanagisawa et al. (International Immunology, 1997, Vol. 9 No. 2, pages 227-237) is withdrawn.

#### ***Claim Rejections Maintained***

#### ***35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The rejection of claims 14-21 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is maintained for reasons of record..

**Applicant argues:**

1. Step b) refers to a mental or calculated subdivision of the antigen into protein fragments.

Applicant's arguments have been fully considered and deemed non-persuasive.

With regard to Point 1, Applicant is reminded mental processes; abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work.” Benson, 409 U.S. at 67, 175 USPQ at 675. It is suggested that set b) be removed from the claimed method.

As outlined previously, the steps recited in claim 14 are confusing. It is unclear how one can perform step b) prior to the synthesizing of antigen fragments or the cleaving of the antigen as recited in claim c). Moreover, it is unclear how one can cleave an antigen into a single protein fragment. Consequently, it is impossible to determine the metes and bounds of the claimed invention.

***New Grounds of Rejection***

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 17 recites the limitation "class II" in line 4. There is insufficient antecedent basis for this limitation in the claim.

### ***Conclusion***

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ROBERT A. ZEMAN** whose telephone number is (571)272-0866. The examiner can normally be reached on Monday- Thursday, 7am -4:00 p.m. .

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol can be reached on (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert A. Zeman/  
Primary Examiner, Art Unit 1645  
July 27, 2011